IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.495 & 496 of 1999

Raghubir Prasad Garg
Proprietor
M/s.Bhagwati Steel Trading Co.,
No.43, Katchalleswarar Agraharam Street,
Chennai-600 001.
Rep. By Power of Attorney
Sandeep Agarwal .. Appellant in both the appeals/Complainant

vs.

Prahir Kumar Pandey
proprietor,
M/s.Associated Steel Supply Agency,
Flat No.107, Block 27,
Neevan Beema Nagar,
Chennai-101. .. Respondent in both the appeals/Accused

Prayer: These appeals have been preferred u/s 378 of Crl.P.C against Judgment dated 19.04.1999, in C.C.No.5088 & 5094 of 1997 respectively on the file of the Court of VII Metropolitan Magistrate, George Town, Madras.

For Appellant : Mr.T.R.Ravi (in both the appeals)
For Respondent : Mr.E.C.Ramesh (in both the appeals)

JUDGMENT

These appeals have been preferred against Judgment in C.C.No.5088 & 5094 of 1997 respectively on the file of the Court of VII Metropolitan Magistrate, George Town, Madras.

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2. In Crl.A.No.495/1999:-

2(a) The complainant in C.C.No.5088/1997 is the appellant herein. A private complaint was preferred under Section 200 of Cr.P.C for the offence under Section 138 of the Negotiable Instrument Act. The private complaint reads as follows:-

The accused owes Rs.40,999/- to the complainant in connection with the purchase of steel from complainant's company. In discharge of

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the said amount the accused had drawn four cheques each for Rs.10,000/- on 25.6.1997 and another cheque for Rs.2,985.65 on 25.6.1997. When those five cheques were presented in the bank on 26.6.1997 they were dishonoured on the ground that there was no sufficient funds in the account of the accused. When the above cheques were presented on 16.7.1997 at the request of the accused in the Bank, once again the cheques met with the same fate. On 21.7.1997 the complainant issued notice to the accused informing him about the dishonour of the cheques. The said notice was received by the accused on 01.08.1997. The accused has sent a reply on 11.8.1997 but failed to discharge the debt due to the complainant. Hence, the complaint.

2(b) After examining the complainant the learned trial judge has taken the complaint on file and issued summons to the accused. After appearance of the accused copies under Section 207 of Cr.P.C. were furnished to the accused and when the offence was explained to the accused he pleaded not guilty. On the side of the complainant P.W.1 to P.W.3 were examined. Ex.P.1 to P.10 were marked.

2(c) P.W.1 is the power of attorney agent of the complainant's company. Ex.P.1 is the power of attorney deed. P.W.1 would depose that the accused owes Rs.42,999/- to the complainant's company and in order to discharge the said debt the accused had drawn five cheques dated 25.6.1997. On 25.06.1997 the accused gave a cheque for Rs.10,000/- which is Ex.P.2 and on the same day the accused gave another cheque Ex.P.3 for Rs.10,000/- and on the same day the accused gave Ex.P.4-cheque for Rs.10,000/-. When those cheques were presented in the Bank they were dishonoured. Ex.P.5, Ex.P.6 and Ex.P.7 are the notices issued by the Bank. Ex.P.8 is the bank notice issued by the complainant. Ex.P.9 is the acknowledgment. Ex.P.10 is the reply notice. Ex.P.11 is the statement of account.

2(d) P.W.2 is the Manager of Dena Bank, Broadway Branch. He would depose that the complainant-M/s.Bhagwati Steel Trading Co., is having current Account NO.102121 and Cheques bearing Nos.134420 to 134424 were issued by the accused-Company through its Union Bank, Krishna Nagar branch and the said cheques were dishonoured on the ground that there was no sufficient founds in the accused's account. Accordingly this was informed to the complainant through Ex.P.5 to P.7.

2(e) P.W.3 is the officer of Union Bank, T.S.Krishna Nagar Branch. The accused-M/s.Associated Steel Supply Agency, is run by Prahir Kumar Pandey and the accused is having an account in the said branch and the account number is 11031. Ex.P.2 to P.4 are the cheques relating to the said account. When those cheques were presented before their Bank, the same were returned on the ground that there was no sufficient funds in the accounts of the drawer. Ex.P.5 to P.7 are the intimations sent to the payee of the cheque. Ex.P.12 is the statement of accounts for the accused.

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2(f) On the basis of the evidence when incriminating circumstances were put to the accused, the accused denied his complicity with the crime.

3. In C.A.496/1999 :-

3(a) The complainant has filed a private complaint under Section 200 of Cr.P.C. for an offence under Section 138 of Negotiable Instrument Act against the accused. In the affidavit to the complaint, the complainant would state that he is the administrator of M/s.Bhagwati Steel Trading Co., and that he was given power of attorney to conduct the case on behalf of the complainant-company. The accused is conducting steel supply agency and had transaction with the complainant-company. Under the said transaction a sum of Rs.42,999/- is due to the complainant-company from the accused. The accused had given 4 cheques each for Rs.10,000/- on 25.6.1997 and another cheque for Rs. 2,985.65. When those cheques were presented in the bank they were dishonoured on 26.6.1997 on the ground that there was no sufficient funds in the drawers account. The complainant has issued a notice on 21.7.1997. The said notice was received by the accused on 1.8.1997 and he had sent a reply notice on 11.8.1997. Hence, the complaint.

3(b) After recording the sworn statement of the complainant the complaint was taken on file by the learned Judicial Magistrate and summons were issued to the accused and on appearance, the accused was furnished with the copies under Section 207 of Cr.P.C. and when the offence was explained to the accused he pleaded not guilty.

3(c) P.W1 is the power of attorney holder of the complainant-company. Ex.P.1 is the power of attorney. P.W.1 would depose that in connection with the supply of tools and steels to the accused, the accused owes Rs.42,999/- and in this regard the accused gave 5 cheques out of them 4 cheques are dated 25.6.1997 each for Rs.10,000/- and on the same day another cheque for Rs.2,985.65 was also drawn by the accused. Ex.P.2 & P.3 are those cheques. When those cheques were presented for encashment the same were returned with an endorsement "no sufficient funds'. Ex.P.4 & P.5 are the returned cheques. Ex.P.7 is the notice issued by the complainant. Ex.P.8 is the reply. Ex.P.9 is the statement of accounts.

3(d) P.W.2 is the broadway branch Manager of Dena Bank. He would depose that the complainant is running a company by name M/s.Bhagwati Steel Trading Co., which is having a current account No.102121. The cheques Nos.134420 to 134424 drawn by M/s.Associated Steel Supply Agency, the accused, in favour of the complainant, which came to his Branch and the said cheques were returned with an endorsement "no sufficient funds in the drawers account". Ex.P.4 & P.5 are the notices.

3(e) P.w.3 is the Officer in Union Bank, T.s.Krishna Nagar Branch. According to P.W.3, the accused herein is running M/s.Associated Steel Supply Agency and he is having an account with Union Bank and Ex.P.2 & P.3 are the cheque leaves belonging to their bank and since there is no

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sufficient funds in the accused's account, the same were returned. Ex.P.4 & P.5 are the notices issued by the Bank and Ex.P.10 is the statement of accounts.

3(f) When the incriminating circumstances were put to the accused, the accused denied his complicity with the crime.

4. After going through the oral and documentary evidene, the learned trial judge has come to the conclusion that the complainant has miserably failed to prove the guilt against the accused beyond any reasonable doubt and consequently acquitted the accused under Section 255(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, these appeals have been preferred by the accused. The learned trial judge after ordering joint trial of both the criminal cases, conducted the trial and concluded that the charges levelled against the accused in both the cases are not proved by the complainant and consequently dismissed the complainant's complaint setting the accused at liberty in both the complaints.

5. Now the point for determination in these appeals is whether the guilt against the accused under Section 138 of the Negotiable Instrument Act has been proved beyond any reasonable doubt to warrant conviction in both the appeals?

6. The Point:-

6(a) The learned trial judge has acquitted the accused on two grounds. The first ground is that as per Ex.P.11-bill (in C.C.5088/1997) the amount due to the complainant in the business transaction from the accused is Rs.42,999/-. But the total amount of the 5 cheques Ex.P.2 to Ex.P.4 (in C.C.No.5094/1997) and Ex.P.2 and Ex.P.3 (in C.C.No.5088/1997) come to Rs.42,985.65 only.

6(b) The learned counsel for the appellant/complainant would contend that the learned trial Judge has come to a wrong conclusion on the ground that under Ex.P.8 (in C.C.No.5088/1997) the complainant has also included the cost of Rs.300/- which will not reflect the exact amount due to the complainant under the business transaction between the complainant and the accused. The learned counsel for the appellant would contend that adding of the interest and cost to the amount will not derive the Court to come to a conclusion that because of such defects in the notice the entire complaint of the complainant cannot be thrown out. In support of this contention the learned counsel for the appellant relied on 1999(1) LW (Crl) 246 (P.V.R.S.Manikumar Vs. Krishna Reddy), wherein the learned judge of this Court has held has follows:-

> "As regards the first point, this Court has already decided in very many decision that the complainant, being entitled to initiate both the civil suit for recovery of the amount and the criminal proceedings for non-payment of the cheque amount, could very well issue notice demanding the cheque amount plus interest amount, so as to enable him to file a suit for recovery of the entire amount. As long as the

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demand of the cheque amount was made in the statutory notice, it cannot be contended that the entire notice becomes invalid merely because the interest amount has been added."

There cannot be two opinion about the findings of the learned judge in respect of the fact that on the basis of inclusion of interest and cheque amount in the notice a suit can be filed. But on the basis of such a notice a criminal complaint under Section 138 of Negotiable Instrument Act cannot be filed because the notice must say what is the amount due to the complainant on the date of drawal of the cheque and the complainant must show that the cheque was drawn for the amount in respect of a subsisting debt which on any account shall not vary from the amount mentioned in the cheque drawn by the accused and dishonoured on presentation. A reading of the above said citation will go to show that the accused in that case had issued two cheques dated 15.12.1997 and 31.3.1998 for Rs.6,50,000/- and Rs.7,25,920/- respectively, one for the principal amount due and the other one is towards interest. So the facts of the case cited above will not be applicable to the present facts of the case. In the case on hand as per Ex.P.11 (in C.C.No.5088/1997) and Ex.P.9 (in C.C.No.5094/1997), statement of accounts, the amount due to the complainant from the accused is Rs.42,999/-. But the total amount of the 5 cheques come to Rs.42,985.65. Out of the 5 cheques, 4 cheques are each for Rs.10,000/- and the 5th cheque in Ex.P.3 (in C.C.No.5094/1997) is for Rs.2,985.65. The complainant must show that Ex.P.3-cheque was also issued towards the amount due under Ex.P.9-statement of accounts (in C.C.No.5094/1997).

6(c) The learned counsel for the appellant would contend that under Section 139 of the Negotiable Instrument Act, the presumption shall be that the cheque has been drawn by the accused only for the amount due to the complainant. But this presumption can be heard only if the complainant proves that all the provisions under Section 138 of Negotiable Instrument Act have been complied with by the complainant. Under Explanation to Section 138 of Negotiable Instrument Act there must be an enforceable debt or other liability and towards the discharge of the said amount the cheque should have been drawn by the accused. The learned trial Judge has come to the correct conclusion that since the total amount of 5 cheques (4 cheques each for Rs.10,000/- and 5th cheque for Rs.2,985.65) do not tally with the statement of accounts under Ex.P.11 (in C.C.No.5088/1997) and under Ex.P.9 (in C.C.No.5094/1997), the accused cannot be found guilty under Section 138 of Negotiable Instrument Act. I do not find any illegality or infirmity in the findings of the learned trial Judge to warrant any interference from this Court. Point is answered accordingly.

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7. In fine, both Crl.A.No.495 & 496 of 1999 are dismissed confirming the judgment in C.C.No.5088 & 5094 of 1997 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The VII Metropolitan Magistrate,
George Town, Madras

2. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai

+2 ccs to Mr.T.R.Ravi, Advocate Sr.No.12610 & 12611

+1 cc to Mr.B.C.Ramesh, Advocate Sr.No.12457.

KSJ(CO)
dcp/13.3.07

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